

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

HARMONY GOLD U.S.A., INC.,

Plaintiff,

vs.

**HAREBRAINED SCHEMES LLC,
HAREBRAINED HOLDINGS, INC.,
JORDAN WEISMAN, PIRANHA GAMES
INC. and DOES 1–10,**

Defendants.

CASE NO. 2:17-cv-00327-TSZ

**DEFENDANT PIRANHA GAMES
INC.’S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF’S COMPLAINT**

JURY TRIAL DEMANDED

Defendant Piranha Games Inc. (“Piranha”) hereby answers the Complaint filed on March 1, 2017 (“the Complaint”) by Harmony Gold U.S.A., Inc. (“Plaintiff” or “Harmony Gold”), as set forth below. Piranha specifically denies all allegations not expressly admitted below.

PARTIES

Paragraph No. 1

Plaintiff Harmony Gold U.S.A., Inc., is a California corporation with its principal place of business in Los Angeles, California.

Response to Paragraph No. 1

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint and, on that basis, denies them.

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Paragraph No. 2

Defendant Harebrained Schemes LLC is a limited liability company formed under the laws of the State of Washington with its principal place of business in Kirkland, Washington.

Response to Paragraph No. 2

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Complaint and, on that basis, denies them.

Paragraph No. 3

Defendant Harebrained Holdings, Inc. is a corporation formed under the laws of the State of Washington with its principal place of business in Bellevue, Washington. On information and belief, Harebrained Holdings, Inc., does business under the name Harebrained Schemes. (Harebrained Schemes LLC and Harebrained Holdings, Inc., are referred to collectively as “Harebrained Schemes”).

Response to Paragraph No. 3

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Complaint and, on that basis, denies them.

Paragraph No. 4

Defendant Jordan Weisman (“Weisman”) is an individual who, on information and belief, resides in Bellevue, Washington. On further information and belief, Weisman is the CEO and registered agent for Harebrained Schemes LLC, and is a governor of Harebrained Holdings, Inc. Weisman is the moving, active and conscious force behind Harebrained Schemes; has directed and controlled the activities of Harebrained Schemes complained of herein; has

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participated in, assisted in and/or is responsible for the conduct alleged herein; and entered into the Settlement Agreement with Harmony Gold at issue in the breach-of-contract claim set forth in this Complaint.

Response to Paragraph No. 4

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Complaint and, on that basis, denies them.

Paragraph No. 5

Defendant Piranha Games Inc. (“Piranha Games”) is a corporation created under the laws of British Columbia, Canada, with its principal place of business in Vancouver, British Columbia, Canada.

Response to Paragraph No. 5

Piranha admits that it is incorporated under the laws of British Columbia, Canada with a place of business at in Vancouver, British Columbia, Canada.

Paragraph No. 6

On information and belief, Does 1–10 (collectively, the “Doe Defendants”) are individuals and business entities who have participated or assisted in the conduct alleged herein or are otherwise responsible therefor. The identities of these Doe Defendants presently are not and cannot be known to Harmony Gold, but these persons and/or entities will be added as named defendants to this action as and when they are identified (collectively, Harebrained Schemes LLC, Harebrained Holdings, Inc., Weisman, Piranha Games and the Doe Defendants are referred to herein as “Defendants”).

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Response to Paragraph No. 6

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Complaint and, on that basis, denies them.

JURISDICTION AND VENUE**Paragraph No. 7**

This Court has jurisdiction because (i) this action arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and jurisdiction is specifically conferred by 28 U.S.C. §§ 1331 and 1338(a); and (ii) this is an action between citizens of different states in which the value of the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, jurisdiction being conferred in accordance with 28 U.S.C. § 1332. Jurisdiction for the Washington State common law claim is conferred in accordance with the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

Response to Paragraph No. 7

Piranha admits that Plaintiff purports to state an action arising under the laws of the United States, specifically for copyright infringement arising under the Copyright Act, Title 17 of the United States Code, § 101 *et seq.*, and Piranha admits that this Court has subject matter jurisdiction as to that claim. Piranha admits that Plaintiff purports to state an action arising under Washington State common law and that this Court has subject matter jurisdiction in accordance with the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a). Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 7 of the Complaint and, on that basis, denies them.

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Paragraph No. 8

Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) in that Defendants Harebrained Schemes LLC, Harebrained Holdings, Inc., and Weisman reside in this judicial district. Venue is proper under 28 U.S.C. § 1391(c)(3) in that Defendant Piranha Games is a foreign resident based in Vancouver, British Columbia, Canada, and on information and belief there is no other judicial district in which venue would be more appropriate. Venue is also proper under 28 U.S.C. § 1391(b)(2) as a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

Response to Paragraph No. 8

Piranha admits that Piranha is a foreign entity incorporated under the laws of British Columbia, Canada. Piranha denies that any events or omissions giving rise to the claims in the Complaint occurred in this judicial district or any other district. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 8 of the Complaint and, on that basis, denies them.

FACTS**Harmony Gold and the History of “Robotech”****Paragraph No. 9**

This case involves animated giant warrior robots. In about 1980, Japan-based Tatsunoko Production Company, Ltd. (“Tatsunoko”), created a series of original warrior robots and incorporated them into an animated television series in Japan named “Macross.” Tatsunoko was the exclusive owner and producer of the Macross television series in Japan.

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Response to Paragraph No. 9

Piranha admits that certain allegations in the Complaint involve animated giant warrior robots. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 9 of the Complaint and, on that basis, denies them.

Paragraph No. 10

In the 1980s, Tatsunoko produced two additional animated television series in Japan that incorporated its futuristic warrior robots — “Mospeada” and “The Southern Cross” — for which it was also the exclusive owner in Japan.

Response to Paragraph No. 10

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Complaint and, on that basis, denies them.

Paragraph No. 11

In 1984, Tatsunoko granted entertainment production company Harmony Gold an exclusive license to adapt the Macross, Mospeada and The Southern Cross series for a television series in the United States, which Harmony Gold named “Robotech.” In 1985, the first of 85 episodes of the Harmony Gold-produced Robotech animated series aired in the United States. (Hereinafter, all of Harmony Gold’s Macross, Mospeada, The Southern Cross and Robotech shows, characters, products and derivative works are referred to as “Robotech.”).

Response to Paragraph No. 11

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Complaint and, on that basis, denies them.

Paragraph No. 12

Tatsunoko also granted Harmony Gold an exclusive license to market in the United States products incorporating Robotech warrior robots, such as books, toys, video games, films, comic books and apparel. Harmony Gold possesses this exclusive license to this day.

Response to Paragraph No. 12

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Complaint and, on that basis, denies them.

Paragraph No. 13

Harmony Gold and Tatsunoko are owners of a large portfolio of United States Copyright Registrations for animated programs, books, comic books and other materials incorporating images of the Robotech warrior robots, including the following:

- “Macross: Booby Trap” (PA 252,486); February 7, 1985 registration date
- “Mospeada” (PAu 740,321); March 28, 1985 registration date
- “Southern Cross” (PAu 740,322); March 28, 1985 registration date
- “Macross” (PAu 740,323); March 28, 1985 registration date
- “Robotech” (PA 260,432); August 22, 1985 registration date
- “Robotech II: The Sentinels” (PA 370,656); August 11, 1987 registration date
- “Robotech II: The Sentinels; Episodes 1, 2 and 3” (PAu 1,117,191); August 11, 1987 registration date
- “Robotech 3000” (PAu 2,415,945); May 26, 1999 registration date


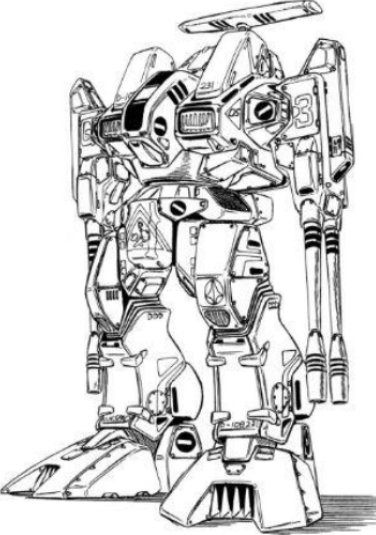
The certificates for these registrations are attached as Exhibit A.

Response to Paragraph No. 13

Piranha admits that what purport to be true copies of copyright registrations for the works listed in paragraph 13 of the Complaint are attached as Exhibit A. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 13 of the Complaint and, on that basis, denies them.

Paragraph No. 14

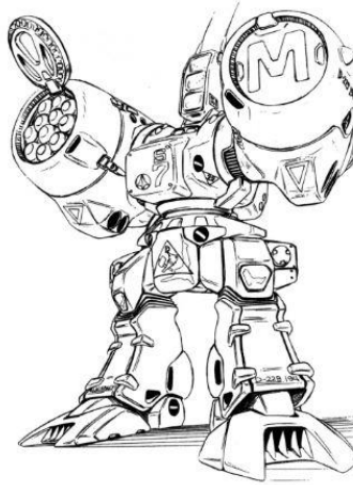
The warrior robots depicted in the Robotech copyright registrations owned by Harmony Gold include, but are not limited to, the following:

Robotech Warrior Robot Name	Robotech Warrior Robot Image
Armored Valkyrie	
Destroid Defender	

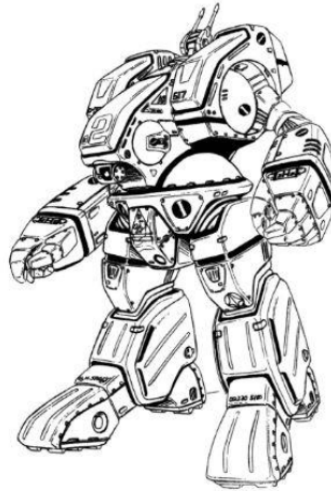
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Destroid Phalanx



Destroid Spartan



Destroid Tomahawk



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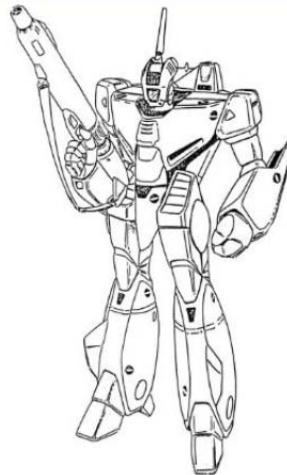
Officer's Pod (Glaug)



Super Valkyrie



Valkyrie VF-1A



Valkyrie VF-1S



Response to Paragraph No. 14

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Complaint and, on that basis, denies them.

Paragraph No. 15

Harmony Gold has the exclusive right to make copies of, distribute, publicly perform, display and make derivative works of the Robotech warrior robots in the United States.

Response to Paragraph No. 15

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Complaint and, on that basis, denies them.

Harmony Gold's Prior Litigation Against Weisman

Paragraph No. 16

In 1995, Harmony Gold filed a copyright infringement and unfair competition complaint against FASA Corporation, which was owned by Weisman, and Virtual World Entertainment for

1 infringement of the Robotech copyrights by the warrior robot designs in the defendants’
 2 “BattleTech” virtual reality computer games, role playing games, merchandise and a planned
 3 animated television series and toy line.

4 **Response to Paragraph No. 16**

5 Piranha lacks knowledge or information sufficient to form a belief as to the truth of the
 6 allegations of paragraph 16 of the Complaint and, on that basis, denies them.

7 **Paragraph No. 17**

8
 9 This prior litigation concluded when the parties agreed to a “Settlement Agreement and
 10 Mutual General Release” (the “Settlement Agreement”), which had an effective date of
 11 December 19, 1996, and to which Weisman was a signatory. In addition to agreeing to a
 12 monetary payment, Weisman and his co-defendants agreed that they would not “make any use,
 13 and will not authorize [their] licensees to make any use, of the visual design images of the twelve
 14 (12) Battlemechs listed below except as provided in this agreement.” These 12 “Battlemechs”
 15 include those detailed below in Paragraph 27, which presents side-by-side comparisons of
 16 Harebrained Schemes’ and Weisman’s current warrior robot designs and the corresponding
 17 Harmony Gold Robotech designs. Weisman also agreed to the entry of a permanent injunction
 18 and acknowledged that violating the use restriction would cause Harmony Gold “irreparable
 19 harm.” Further, Weisman agreed that he would not “contest, nor [would he] assist any other
 20 person or entity in contesting, Harmony Gold’s exclusive ownership worldwide, excluding
 21 Japan,” of the Robotech merchandising rights. This Settlement Agreement is confidential, and
 22 therefore has not been attached to this Complaint.
 23
 24
 25

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Response to Paragraph No. 17

Piranha admits that the Settlement Agreement referenced in paragraph 17 of the Complaint was, and is, not attached to the Complaint. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 17 of the Complaint and, on that basis, denies them.

Current Unauthorized Copying by Defendant Piranha Games**Paragraph No. 18**

Defendant video game production company Piranha Games developed and distributes an online game named “MechWarrior Online” incorporating warrior robots, which it calls “A BattleTech Game.” In April 2013, Piranha Games submitted a proposed design to Harmony Gold for an animated warrior robot for use in MechWarrior Online to get an opinion from Harmony Gold if this new design infringed Harmony Gold’s Robotech copyrights. Harmony Gold determined that Piranha Games’ design was derivative of its copyrighted Destroid Tomahawk warrior robot, and Harmony Gold’s outside counsel sent an e-mail to Piranha Games’ founder and president Russ Bullock informing him of that decision. On information and belief, Piranha Games never used this proposed 2013 design.

Response to Paragraph No. 18

Piranha admits that it is a video game production company that developed and distributes an online game named “MechWarrior Online” which incorporates warrior robots and is referred to as “A BattleTech Game.” Piranha further admits that in April, 2013, Piranha’s founder and president, Russ Bullock, contacted Harmony Gold’s counsel regarding proposed original artwork for an animated warrior robot for use in MechWarrior Online, but that particular design was

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never used by Piranha. Piranha further admits that Harmony Gold's counsel sent Mr. Bullock an e-mail alleging that the proposed design was derivative of the Destroid Tomahawk warrior robot allegedly owned by Harmony Gold. Piranha denies that its proposed design was derivative of the Destroid Tomahawk warrior robot and further denies that the proposed design infringes any of Harmony Gold's valid, alleged copyrights. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 18 of the Complaint and, on that basis, denies them.

Paragraph No. 19

In May 2013, Mr. Bullock sent another proposed design for a MechWarrior Online warrior robot to Harmony Gold's counsel. Harmony Gold determined that Piranha Games' new design was derivative of Harmony Gold's copyrighted Zentradei OBP warrior robot, and therefore infringed Harmony Gold's registered copyrights. Harmony Gold's counsel again informed Mr. Bullock of that determination via e-mail. On information and belief, Piranha Games never used this other proposed 2013 design.

Response to Paragraph No. 19

Piranha admits that in May, 2013, Mr. Bullock contacted Harmony Gold's counsel regarding proposed original artwork for another animated warrior robot for use in MechWarrior Online, but that particular design was also never used by Piranha. Piranha further admits that Harmony Gold's counsel sent Mr. Bullock an e-mail alleging that the proposed design was derivative of the Zentradei OBP warrior robot allegedly owned by Harmony Gold. Piranha denies that its proposed design was derivative of the Zentradei OBP warrior robot and further denies that the proposed original artwork infringes any of Harmony Gold's valid, alleged

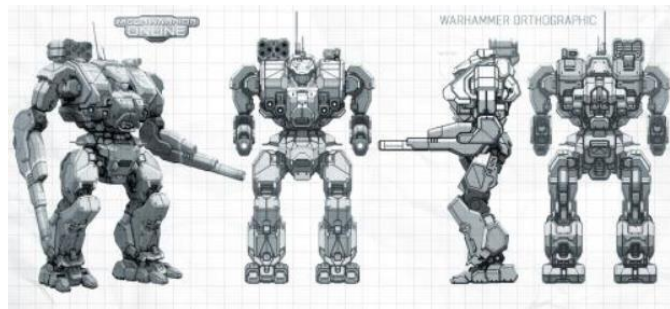
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copyrights. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 19 of the Complaint and, on that basis, denies them.

Paragraph No. 20

In July 2016, Harmony Gold discovered infringing images that were derivative works of its Destroid Tomahawk warrior robot featured on the website of Catalyst Game Labs (“Catalyst”), a purveyor of board games. A blog post from Catalyst reads, “It’s been an absolute blast working withy [sic] Matt Newman, Russ Bullock (and of course their whole great team) generating these lore vignettes.” The following image of the infringing robot warriors appeared on the blog post by Catalyst:



Response to Paragraph No. 20

Piranha admits that a blog post on Catalyst’s website (<http://catalystgamelabs.tumblr.com/post/133477171811/mwo-warhammer-blueprint-and-lore-story-of-the>) states that “[i]t’s been an absolute blast working withy [sic] Matt Newman, Russ Bullock (and of course their whole great team) generating these lore vignettes.” Piranha admits that the images shown in paragraph 20 of the Complaint are currently displayed on Catalyst’s website. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 20 of the Complaint and, on that basis, denies them.

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Paragraph No. 21

Harmony Gold's counsel immediately e-mailed Mr. Bullock regarding this infringement, and in his response Mr. Bullock admitted that Piranha Games had developed these warrior robot designs, and that Catalyst created fan fiction around these designs. He also wrote: "At Piranha we make no claim to any use or legal right to the Robotech Macross designs that are owned by Harmony Gold."


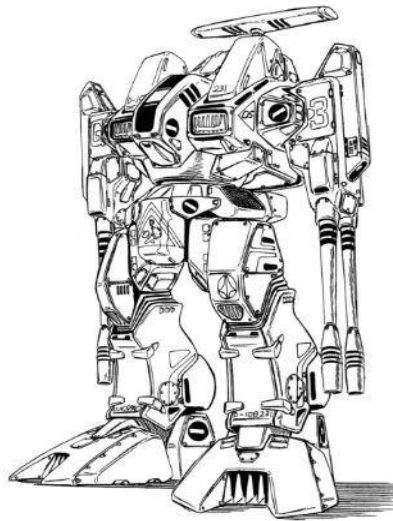

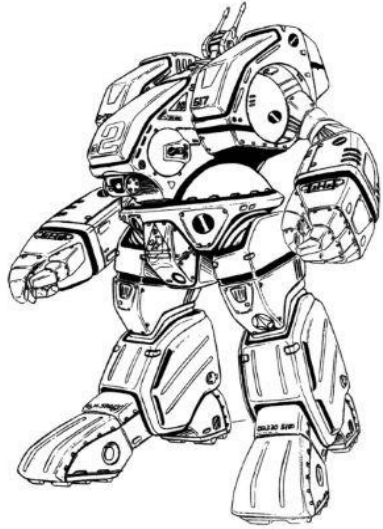
Response to Paragraph No. 21

Piranha admits that on July 20, 2016, Harmony Gold's counsel e-mailed Mr. Bullock contending that some of Piranha's designs infringe Harmony Gold's alleged copyrights. Piranha further admits that Mr. Bullock responded on July 21, 2016 stating that Piranha has developed various warrior robot designs as original works. Piranha further admits that Mr. Bullock stated that "[a]t Piranha we make no claim to any use or legal right to the Robotech Macross designs that are owned by Harmony Gold." Piranha denies that it has infringed any valid copyright owned by Harmony Gold. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 21 of the Complaint and, on that basis, denies them.

Paragraph No. 22

Despite Mr. Bullock's admission that Piranha Games does not have the right to use Harmony Gold's copyrighted Robotech designs, Piranha Games is doing exactly that without Harmony Gold's permission. Piranha Games operates a website for its MechWarrior Online game at www.mwomercs.com. On this site, Piranha Games displays the following images of

robot warriors that infringe Harmony Gold's copyrights and that appear to be used in the MechWarrior Online game:

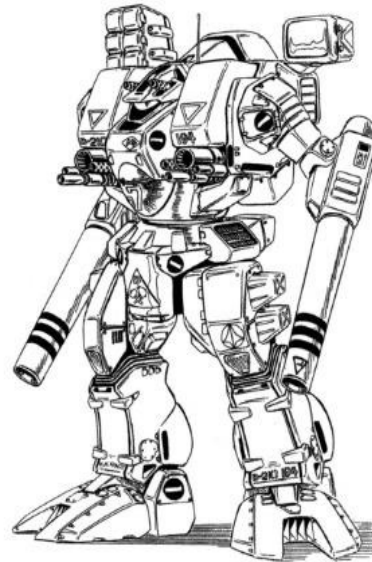
Piranha Games' Infringing Image	Harmony Gold's Copyrighted Image
 <p>(Rifleman)</p>	 <p>(Destroid Defender)</p>
 <p>(Archer)</p>	 <p>(Destroid Spartan)</p>

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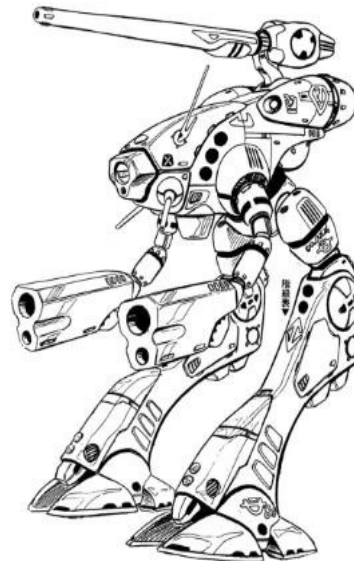
(Warhammer)



(Destroid Tomahawk)



(Marauder/Marauder IIC)



(Officer's Pod/Glaug)

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(Phoenix Hawk)



(Super Valkyrie)

Response to Paragraph No. 22

Piranha admits that it operates a website for its MechWarrior Online game at www.mwomercs.com. Piranha denies that any of the images of robot warriors displayed on the MechWarrior Online website or that are used in the MechWarrior Online game infringe any of Harmony Gold's valid, alleged copyrights. Piranha further denies that it has used any of Harmony Gold's alleged copyrighted Robotech designs. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 22 of the Complaint and, on that basis, denies them.

Paragraph No. 23

On October 3, 2016, Harmony Gold's counsel sent a letter to Mr. Bullock and Weisman (as MechWarrior Online is branded as "A BattleTech Game"), demanding that this infringement stop, and demanding that Mr. Bullock and Weisman disclose the relationship between Piranha Games and Harebrained Schemes for the creation of MechWarrior Online. Piranha Games

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1 retained U.S. counsel and denied that the robot warriors in MechWarrior Online infringe
 2 Harmony Gold's copyrights.

3 **Response to Paragraph No. 23**

4 Piranha admits that it received a letter dated October 3, 2016 from Harmony Gold's
 5 counsel demanding that FASA and Piranha cease their alleged infringement of Harmony Gold's
 6 alleged copyrights and requesting that Mr. Bullock and Mr. Weisman disclose the relationship
 7 between Piranha and FASA. Piranha admits that it has retained U.S. counsel and has denied that
 8 the robot warriors in MechWarrior Online infringe any of Harmony Gold's valid, alleged
 9 copyrights. Piranha lacks knowledge or information sufficient to form a belief as to the truth of
 10 the remaining allegations of paragraph 23 of the Complaint and, on that basis, denies them.

11 **Paragraph No. 24**

12 To this date, Piranha Games' infringement continues.

13 **Response to Paragraph No. 24**

14 Piranha denies that it has ever infringed any of Harmony Gold's valid, alleged
 15 copyrights.

16 **Current Unauthorized Copying by Defendants Harebrained Schemes and Weisman**

17 **Paragraph No. 25**

18 Defendant video game production studio Harebrained Schemes is in the process of
 19 developing a new PC video game named "BattleTech." The BattleTech website at
 20 www.battletechgame.com reads, "Jordan Weisman, the creator of BattleTech and MechWarrior,
 21 is back with the first turn-based BattleTech game for PC in over two decades. BATTLETECH
 22
 23
 24
 25

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will feature modern turn-based combat, PVP multiplayer, and a story-driven, Mercenaries-style campaign set in the 3025 era of the BattleTech universe.”

Response to Paragraph No. 25

Piranha admits that The BattleTech website at www.battletechgame.com states that “Jordan Weisman, the creator of BattleTech and MechWarrior, is back with the first turn-based BattleTech game for PC in over two decades. BATTLETECH will feature modern turn-based combat, PVP multiplayer, and a story-driven, Mercenaries-style campaign set in the 3025 era of the BattleTech universe.” Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 25 of the Complaint and, on that basis, denies them.

Paragraph No. 26

Harebrained Schemes held two crowdfunding campaigns for its BattleTech game. As of February 28, 2017, its Kickstarter campaign had raised \$2,785,537.13 from 41,733 backers, and its BackerKit campaign had raised \$372,387.95 from 48,681 backers.

Response to Paragraph No. 26


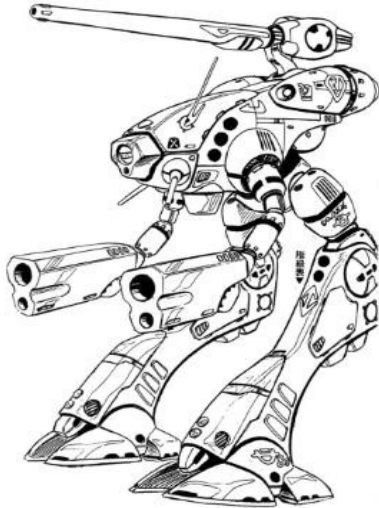


Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 of the Complaint and, on that basis, denies them.

Paragraph No. 27

On its websites at www.harebrained-schemes.com and www.battletechgame.com, Harebrained Schemes displays the following images of robot warriors that infringe Harmony Gold’s copyrights. On information and belief, these are depictions of the warrior robots that will be featured in the upcoming BattleTech video game:

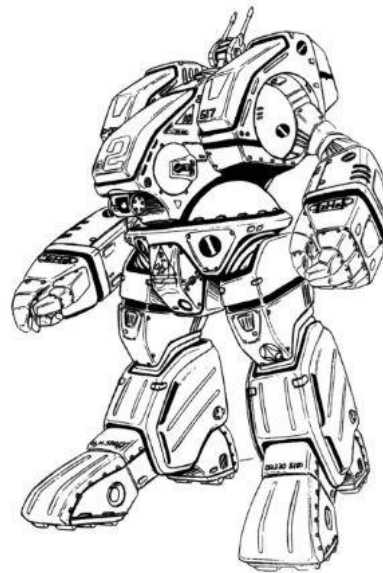
DEFENDANT PIRANHA GAMES INC.’S
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Harebrained Schemes' Infringing Image	Harmony Gold's Original Image
	 (Officer's Pod/Glaug)
	 (Armored Valkyrie)

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(Destroid Spartan)

Response to Paragraph No. 27

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Complaint and, on that basis, denies them.

Paragraph No. 28

Joe DiNunzio, Chief Financial Officer for Harebrained Holdings, Inc., responded on November 7, 2016, to the October 3, 2016, letter from Harmony Gold's counsel described above in Paragraph 23. In that letter, he claimed that, "Our use of these designs and images is solely through licenses we have obtained from Piranha Games. Our relationship with Piranha Games is solely as a licensee of certain intellectual property."

Response to Paragraph No. 28

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Complaint and, on that basis, denies them.

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Paragraph No. 29

Subsequently, on November 18, 2016, counsel for Weisman and Harebrained Schemes responded to the October 3 letter from Harmony Gold's counsel as follows:

HBS entered into a license agreement with Piranha Games to license certain content for use in a HBS game. We have certain confidentiality obligations with respect to the license agreement so we cannot comment as to specific details. However, we can say that the license agreement makes general commitments about Piranha's rights in the licensed materials provided to HBS, but that the parties did not specifically address the ownership of the 2016 designs.

Response to Paragraph No. 29

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 of the Complaint and, on that basis, denies them.

Paragraph No. 30

To this date, Harebrained Schemes' and Weisman's infringement continues.

Response to Paragraph No. 30

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30 of the Complaint and, on that basis, denies them.

COUNT I

COPYRIGHT INFRINGEMENT — ALL DEFENDANTS

Piranha denies any allegations or characterizations embodied in the heading to the extent that they relate to activities of Piranha.

Paragraph No. 31

Harmony Gold repeats and realleges the allegations contained in Paragraphs 1 through 30 as if fully set forth herein.

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Response to Paragraph No. 31

Piranha repeats and incorporates by reference each of its answers in paragraphs 1 through 30 above as if fully set forth herein in their entireties.

Paragraph No. 32

Harmony Gold owns the copyrights to numerous Robotech warrior robots, including those identified above.

Response to Paragraph No. 32

Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the Complaint and, on that basis, denies them.

Paragraph No. 33

Defendants have infringed Harmony Gold's copyrights to these warrior robots through their unauthorized copying, distribution and display of warrior robots that are substantially similar to those owned by Harmony Gold, and that are derivative of the copyrighted Robotech warrior robots owned by Harmony Gold.

Response to Paragraph No. 33

Piranha denies the allegations in paragraph 33 of the Complaint as they relate to Piranha. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 33 of the Complaint and, on that basis, denies them.

Paragraph No. 34

Defendants had access to Harmony Gold's copyrighted Robotech images prior to Defendants' unauthorized and infringing uses of the images.

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Response to Paragraph No. 34

Piranha admits that it had access to some Robotech images that Harmony Gold alleges are covered by its copyrights prior to developing some of Piranha's original designs. Piranha denies that it has infringed any of Harmony Gold's valid, alleged copyrights. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 34 of the Complaint and, on that basis, denies them.

Paragraph No. 35

Defendants' actions have irreparably damaged and, unless enjoined, will continue to irreparably damage Harmony Gold. Harmony Gold has no adequate remedy at law for these wrongs and injuries. Harmony Gold is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining Defendants and their agents, servants, employees, attorneys and all persons acting in concert with them from infringing Harmony Gold's copyrights.

Response to Paragraph No. 35

Piranha denies the allegations in paragraph 35 of the Complaint as they relate to Piranha. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 35 of the Complaint and, on that basis, denies them.

Paragraph No. 36

Defendants have infringed Harmony Gold's copyrights willfully.

Response to Paragraph No. 36

Piranha denies the allegations in paragraph 36 of the Complaint as they relate to Piranha. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 36 of the Complaint and, on that basis, denies them.

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Paragraph No. 37

Harmony Gold is entitled to recover damages sustained from Defendants' unlawful conduct, including Defendants' profits; Harmony Gold's damages; or, alternatively, at Harmony Gold's election, statutory damages.

Response to Paragraph No. 37

Piranha denies the allegations in paragraph 37 of the Complaint as they relate to Piranha. Piranha lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 37 of the Complaint and, on that basis, denies them.

COUNT II

**(BREACH OF CONTRACT AGAINST WEISMAN AND
HAREBRAINED SCHEMES)**

Piranha is not required to respond to paragraphs 38 through 41 of the Complaint because Plaintiff has not asserted Count II against Piranha. To the extent a response is required, Piranha lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 38 through 41 of the Complaint and, on that basis, denies them.

RESPONES TO PLAINTIFF'S PRAYER FOR RELIEF

Piranha denies that Plaintiff is entitled to any relief against Piranha, whether enumerated as 1 through 6 in the Complaint or otherwise requested.

AFFIRMATIVE DEFENSES

Plaintiff's claims against Piranha are barred in whole or in part by the following Affirmative Defenses. By asserting the Affirmative Defenses set forth below, Piranha does not agree or concede that it bears the burden of proof or the burden of persuasion on any of these

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1 issues, whether in whole or in part. Piranha reserves the right to add or amend its defenses
2 further as additional information is developed through discovery or otherwise.

3 **FIRST AFFIRMATIVE DEFENSE**
4 **(Failure to State a Claim for Relief)**

5 1. Plaintiff's claims are barred, in whole or in part, because the Complaint fails to
6 state any claim against Piranha on which relief can be granted.

7 **SECOND AFFIRMATIVE DEFENSE**
8 **(Noninfringement)**

9 2. Plaintiff's claims are barred, in whole or in part, because Piranha is not infringing,
10 and has in the past infringed, any of the Plaintiff's copyrights.

11 **THIRD AFFIRMATIVE DEFENSE**
12 **(Invalidity or Unenforceability of Copyright)**

13 3. Plaintiff's claims are barred, in whole or in part, because Plaintiff's copyrights are
14 invalid and/or unenforceable, including by reason of lack of originality and lack of copyrightable
15 subject matter.

16 **FOURTH AFFIRMATIVE DEFENSE**
17 **(Fair Use)**

18 4. Plaintiff's claims are barred, in whole or in part, because the alleged violations of
19 copyrights by Piranha are *de minimis*, nominative, and/or fair uses permitted under law.

20 **FIFTH AFFIRMATIVE DEFENSE**
21 **(Estoppel)**

22 5. Plaintiff's claims are barred, in whole or in part, by estoppel.

23 **SIXTH AFFIRMATIVE DEFENSE**
24 **(Waiver)**

25 6. Plaintiff's claims are barred, in whole or in part, by waiver.

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SEVENTH AFFIRMATIVE DEFENSE
(Authorized Use, License, Consent, Acquiescence)

7. Plaintiff's claims are barred, in whole or in part, by license or the doctrine of implied license because Plaintiff impliedly or explicitly, directly, or indirectly, authorized, licensed, consented to, or acquiesced to Piranha's allegedly infringing use of Plaintiff's works.

EIGHTH AFFIRMATIVE DEFENSE
(Innocent Intent)

8. Plaintiff's claims are barred, in whole or in part, because Piranha's conduct was in good faith and with non-willful intent, at all times.

NINTH AFFIRMATIVE DEFENSE
(No Willful Infringement)

9. Plaintiff's claims to enhanced damages and an award of fees and costs against Piranha are barred, in whole or in part, because they have no basis in fact or law.

TENTH AFFIRMATIVE DEFENSE
(First Amendment)

10. Plaintiff's claims are barred, in whole or in part, to the extent Piranha's actions and speech are protected by the First Amendment of the Constitution of the United States.

ELEVENTH AFFIRMATIVE DEFENSE
(Copyright Misuse)

11. Plaintiff's claims are barred, in whole or in part, because it has engaged in one or more acts that have misused their copyrights.

TWELFTH AFFIRMATIVE DEFENSE
(Scenes a Faire Doctrine)

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12. Plaintiff's claims are barred, in whole or in part, because critical parts or portions of Plaintiff's alleged protected copyrights are invalid due to consisting of unprotectable scenes a faire.

THIRTEENTH AFFIRMATIVE DEFENSE
(Merger Doctrine)

13. Plaintiff's claims are barred, in whole or in part, by the doctrine of merger.

FOURTEENTH AFFIRMATIVE DEFENSE
(Lack of Ownership)

14. Plaintiff's claims are barred, in whole or in part, because Plaintiff does not own some or all of the works of authorship that form the subject of the claims for relief.

FIFTEENTH AFFIRMATIVE DEFENSE
(Lack of Standing)

15. Plaintiff's claims are barred, in whole or in part, because some or all of the works of authorship that form the subject of the claims for relief are not original to Plaintiff and, therefore, Plaintiff lacks standing to pursue these claims.

SIXTEENTH AFFIRMATIVE DEFENSE
(No Basis for Injunction)

16. Plaintiff's claims to injunctive relief are barred, in whole or in part, because (1) it is not likely to prevail on the merits; (2) Plaintiff has not suffered and will not suffer irreparable harm because of any conduct by Piranha; and (3) Plaintiff has an adequate remedy at law for its alleged injury.

ADDITIONAL DEFENSES

17. Piranha reserves the right to supplement or amend this answer, including through the addition of further affirmative defenses, based upon the course of discovery and proceedings in this action, including, but not limited to, equitable defenses such as unclean hands.

PRAYER FOR RELIEF

For all of the above reasons, Piranha respectfully prays that:

1. Plaintiff's Complaint be dismissed with prejudice;
2. Plaintiff takes nothing by its Complaint;
3. The Court award Piranha the costs of suit; and
4. Piranha be awarded with such other and further relief to which it may be justly entitled.

DEMAND FOR JURY TRIAL

Piranha hereby demands a trial by jury on all issues so triable.

1 DATED: April 24, 2017

Respectfully submitted,

2 DORSEY & WHITNEY LLP

3 By /s/ Paul T. Meiklejohn

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Attorneys for Defendant Piranha Games Inc.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of DEFENDANT PIRANHA GAMES INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT was served on the following parties, by the method(s) indicated below, on April 24, 2017.

Damon C. Elder
Andrew R.W. Hughes
CALFO EAKES & OSTROVSKY PLLC
1301 Second Avenue, Suite 2800
Seattle, WA 98101-3808

☒ Via ECF
☐ Via Hand Delivery
☐ Via Overnight Courier
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/s/ Paul T. Meiklejohn

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